

ARKANSAS SUPREME COURT

No. CR 06-791

FRANK MICHAEL JOHNSON
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered April 5, 2007

PRO SE MOTION FOR
RECONSIDERATION OF DISMISSAL
OF APPEAL [CIRCUIT COURT OF
FAULKNER COUNTY, CR 2002-1402,
HON. CHARLES EDWARD
CLAWSON, JR., JUDGE]

MOTION DENIED.

PER CURIAM

Appellant Frank Michael Johnson was convicted of manufacture of a controlled substance, methamphetamine, possession of a controlled substance, methamphetamine, simultaneous possession of drugs and firearms, use of paraphernalia to manufacture methamphetamine, possession of drug paraphernalia, maintaining a drug premises in a drug-free zone, and possession of ephedrine with intent to manufacture methamphetamine. He was sentenced to an aggregate term of 300 months' imprisonment on the charges. The Arkansas Court of Appeals affirmed the judgment. *Johnson v. State*, CACR 04-1135 (Ark. App. Sept. 7, 2005). Appellant filed a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied. He brought an appeal from the order denying postconviction relief in this court and we dismissed that appeal. *Johnson v. State*, CR 06-791 (Ark. Feb. 15, 2007) (per curiam). Now before us is appellant's motion for reconsideration of the dismissal of that appeal.

Appellant asserts that the dismissal violated his right to due process, alleging that our rules

indicate that a petition under Rule 37.1 may be filed before the mandate is issued. Appellant contends, as a part of that argument, that the filing of such a petition is similar to the filing of a belated appeal. He asserts that, if a petition must be filed after the mandate issues, he was disadvantaged as a pro se litigant as it was difficult to determine when the mandate issued and the petition may be filed on the nineteenth day after the judgment is rendered. These arguments are without merit.

Appellant first argues that subsection (c) of Ark. R. Crim. P. 37.2 does not indicate that a petition may not be filed before the mandate. As we noted in the opinion dismissing the appeal, the prohibition stated in Rule 37.2 is found in subsection (a). We further noted that, prior to the issuance of the mandate, the circuit court does not have jurisdiction to grant relief on a Rule 37.1 petition. The situation is, therefore, not analogous to the early filing of a notice of appeal as appellant claims, where the circuit court has jurisdiction and has rendered a decision from the bench, but not yet entered a written order.

Appellant next argues that Ark. Sup. Ct. R. 5-3(b) should support the filing of his petition on the nineteenth day after the judgment was rendered. Rule 5-3 provides

No transcript of any judgment, decision or opinion of the Court shall be certified by the Clerk, or mandate issued, within 18 calendar days after the judgment is rendered without special leave of the Court or upon stipulation of counsel, except in the case of the denial of a petition under Rule 37 of the Arkansas Rules of Criminal Procedure, in which case the decision of the Court shall be certified by the Clerk and the mandate issued on the day the decision is rendered.

Once again, appellant would have us read isolated portions of the rule without placing them in context. Our Rule 5-3(a) clearly contemplates various reasons that a judgment may not be final when rendered, and Rule 5-3(b) dictates no set time when the mandate must issue for a direct appeal,

although it does so for denial of a petition for Rule 37.1 relief. Instead, Rule 5-3 simply prohibits our clerk from issuing the mandate, in cases other than those under Rule 37, before a minimum of eighteen days has elapsed.

With respect to appellant's claim that he is disadvantaged due to his pro se status, we do not find his argument persuasive. Appellant correctly acknowledges that we hold pro se litigants to the same standards as an attorney. *See Tarry v. State*, 353 Ark. 158, 114 S.W.3d 161 (2003) (per curiam). While appellant asserts that attorneys have access to information concerning the issuance of the mandate to which a pro se litigant is not privy, he does not indicate how this is so. We are not aware of any advantage afforded to an attorney as an officer of the court. Indeed, the information at issue is available to the public at large.

Motion denied.